

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5282 of 2006
With
CIVIL APPLICATION No. 15064 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. - Appellant(s)
Versus
TEJPAL NARANJI BHADRA F/O. LATE DILIP T. BHADRA & 6 -
Defendant(s)

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Appearance :

MR PV NANAVALI for Appellant(s) : 1, MR VIBHUTI NANAVALI for Appellant(s) : 1,
 MR SURESH M SHAH for Defendant(s) : 1,
 None for Defendant(s) : 2 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant-Insurance Company has challenged the judgment and award dated 22.8.2006 of the Motor Accident Claims Tribunal, Kutch at Bhuj in MAC Petition No.435 of 2003 awarding compensation of Rs.3,46,500/- to the parents and brother and sister of Dilip Tejpal Bhadra who died in a motor vehicle accident between the motor-cycle on which the deceased was a pillion-rider and which vehicle was insured by the appellant-herein and the tempo insured by the Oriental Insurance Co. Ltd..

2. On 6.5.2003 the deceased was travelling as a pillion-rider on a motor-cycle insured by the appellant-Insurance Company. The said motor-cycle met with an accident with the tempo insured by the other Insurance Company. On account of the serious injuries received by the deceased, the deceased succumbed to the same. The parents of the deceased filed claim petition for compensation of Rs.3,84,500/- under Section 163A of the Act. The Tribunal accepted the claimants' case that the deceased was getting salary of Rs.2250/- per month from a firm called Hetal Enterprise where the deceased was doing a part-time job between 3-00 PM and 8-00 PM. The income certificate was produced at Exh.51. The annual income of the deceased was thus assessed at Rs.27,000/-.

Since the claim petition was under Section 163A of the Act and the deceased was aged 16 years on the date of the accident and his income was assessed at Rs.27,000/-, the Tribunal took into consideration the compensation payable under the Second Schedule and determined the amount at Rs.5,13,000/- as the amount of earnings of the deceased. Deducting one-third amount therefrom as the personal expenses of the deceased as provided in the Second Schedule, the Tribunal computed compensation for loss of dependency benefit at Rs.3,42,000/-. Adding thereto the amounts for loss to the estate and funeral expenses, the Tribunal made an award for total compensation of Rs.3,46,500/-.

3. The appellant-Insurance Company has challenged the above award on the ground that the amount is excessive and that the Tribunal has not adhered to the formula contained in the Second Schedule to the Act while making the award.

4. Mr Mehul Suresh Shah for respondent Nos.1 and 2 (original claimants) has opposed the appeal and raised a preliminary contention that the appeal is not maintainable as the Insurance Company had filed an application under Section 170 of the Act, but did not press the application and, therefore, there was no permission granted by the Tribunal in favour of the appellant-Insurance Company under Section 170 of the Act and, therefore, it was not open to the Insurance Company to raise any defence other than the

statutory defences available to it under Section 149(2) of the Act.

5. In our view, there is considerable substance in the preliminary contention raised on behalf of the original claimants. The submission of the learned counsel for the appellant-Insurance Company that when the appellant is challenging the compensation which is not in accordance with the provisions of the Second Schedule to the Act i.e. as regards the quantum of compensation, the Insurance Company really amounts to contesting the award on a ground other than one available under the provisions contained in sub-section (2) of Section 149 of the Act. The appeal is, therefore, not maintainable in so far as it seeks to assail the award as regards the quantum of compensation awarded by the Tribunal.

6. Even assuming that the appeal is maintainable, there is no substance in any of the contentions raised on behalf of the appellant-Insurance Company on merits of the award.

7. The first contention that the Tribunal has determined the quantum by taking into account the prospective income of the deceased is thoroughly misconceived. The Tribunal has assessed the actual income of the deceased at Rs.2250/- on the basis of the income certificate and thereafter considered the entries in the compensation table. Since the table contains various figures, but not the exact annual

income of Rs.27,000/-, the Tribunal has adopted the appropriate amount of compensation between the amounts appropriate to the annual income figures between Rs.24,000/- and Rs.36,000/-. On that basis, the amount comes to Rs.5,31,000/-.

Annual Income	Difference	Amount of Compensation	Difference
Rs.24,000/-		Rs.4,56,000/-	
	Rs.12,000/-	Rs.6,84,000/-	Rs.2,28,000/-
Rs.36,000/-			
Rs.24,000 + Rs.3,000 (25% of Rs.12,000) = Rs.27,000/-		Rs.4,56,000 + Rs.57,000 (25% of Rs.2,28,000) = Rs.5,13,000/-	

With the additional annual income of Rs.3,000/- above Rs.24,000/- p.a., the appropriate additional amount of compensation would be Rs.57,000/-. Therefore, Rs.4,56,000 + Rs.57,000 = Rs.5,13,000/-.

As provided in the Second Schedule to the Act, the Tribunal rightly deducted one-third amount as the personal expenses of the deceased which the deceased would have incurred towards maintaining himself had he been alive. That brings the amount of compensation for loss of dependency benefit to Rs.3,42,000/-. In our view, therefore, the Tribunal has strictly adhered to the structured formula contained in the Second Schedule to the Act.

8. The submission of Mr Nanavati for the

appellant-Insurance Company that if the amount of compensation awarded by the Tribunal is divided by multiplier of 16 years, the monthly income of the deceased would come to Rs.2672/- cannot be accepted. The structured formula contained in the Second Schedule provides for compensation for fatal accident/injury cases claims. The reference to the multiplier is only to be found in Note (a) in para 5 of the Schedule dealing with disability in non-fatal accidents. If the multiplier method were to be adopted in all cases, fatal as well as non-fatal, the entire table containing the annual income and the amounts of compensation relatable to the concerned age would become meaningless. The Legislature would not have provided for such a ready reckoner and would have rested content with providing the multiplier only. We, therefore, do not find any substance in the challenge to the computation of compensation amount by the Tribunal.

9. The next contention urged by the learned counsel for the appellant-Insurance Company on merits was that the Tribunal erred in awarding interest on the compensation amount. It is submitted that the Second Schedule to the Act does not contain any provision for awarding interest in a claim petition under Section 163A of the Act. Therefore, the award of interest is without jurisdiction.

10. This contention is also equally without any merits. Section 171 of the Act, reads as under:-

“171. Award of interest where any claim is allowed. - Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

The power and discretion conferred on the Tribunal to award interest is available in all claim petitions for compensation under the Act, and a claim petition under Section 163A of the Act is as much a claim for compensation made under the Act as a claim petition under Section 166/168 of the Act or Section 140 of the Act. The Tribunal has, therefore, rightly exercised the power and the discretion to award interest at the rate of 9% per annum.

11. Since we do not find any substance in any of the contentions urged on behalf of the appellant-Insurance Company, the appeal is summarily dismissed.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

12. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)